IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.2135 of 2006

Vitthalrao Ramchandra Darwatkar — Applicant
Vs.
Sanjay Vijay Pabsettywar & ors. — Respondents

Mr.V.N.Shingnapurkar for applicant.
Mr.A.S.Shitole, APP for State.

CORAM: B.H.MARLAPALLE, J.

October 9, 2007.

P.C.

. Heard Mr.Shingnapurkar, the learned counsel for the applicant who had filed C.C. No. 25774 of 2005 under Section 138 of the Negotiable Instruments Act, 1881 and the said complaint has been dismissed and the accused has been acquitted by the learned Judicial Magistrate, First Class at Pune as per his judgment and order dated 22/3/2006. Hence this application for special leave to appeal under Section 378(4) of Cr.P.C.

. The learned Magistrate held that the cheque amount of Rs.1,00,000/- could not be proved to have been paid in discharge of debt or any other legal liability.

. As per the complainant he had advanced loan of

Rs.1,00,000/- by cash to the accused on 2/10/2004 and the accused had agreed to repay the same within three months. As per the complainant the accused had delivered post dated cheque (bearing date 7/11/2004) for an amount of Rs.1,00,000/- and when it was presented for encashment, it was dishonoured. The defence put up by the accused was that through his friend Shri Tukaram Patil, the complainant had contacted him sometimes towards the end of September 2004 and the complainant was interested in purchasing his house. The deal was finalised at Rs.14 lakhs and the complainant gave the amount by way of earnest money on 2/10/2004. Thereafter the complainant had paid an amount of Rs.1,50,000/- within about 15 days and in December 2004 he paid another instalment of Rs.2,50,000/- thus making a total of Rs.5 lakhs. As per the accused his son threatened that he would commit suicide if the house was sold and, therefore, the deal was cancelled. Initially when an amount of Rs.1,00,000/- was paid by the complainant, Visar Receipt could not be prepared and, therefore, he had handed over the cheque and on receipt of Rs.5 lakhs Visar Receipt was signed on 23rd January 2005 in the office of Tukaram Patil. The accused paid Rs.5 lakhs to the complainant in cash and the Visar receipt and

cheque were not returned. Subsequently the complainant sought to encash the cheque which was in his possession.

. Two questions arise in view of Section 138 of the N.I.Act viz. (a) whether the complainant proved that he had advanced loan of Rs.1 lakh and the cheque was issued in discharge of the said loan, and (b) whether the accused has been able to prove his defence by cross-examining the complainant and by examining an additional witness Shri Tukaram Patil.

. In his cross-examination the complainant admitted that he sold his house in order to purchase a new one from the said consideration and he had received an amount of Rs.4,65,000/- by way of sale of his house. He also admitted that the remaining amount to be paid to the mother of the accused was ready with him. These admissions are very relevant in view of the defence that was taken by the accused. In addition Shri Tukaram Patil in his depositions admitted the transaction between the complainant and the accused but denied that the amount of Rs.1,50,000/- and Rs.2,50,000/- was paid by the complainant to the accused. However, this witness

admitted that the appellant and the parents of the accused deposited with him an amount of Rs.5 lakhs in the month of April 2005 and the said amount was to be paid to the complainant. When this amount was received from the parents of the accused, he admitted that the complainant and the accused were present. He also stated that the complainant did not return Visar pavti and the amount of Rs.5 lakhs was lying with him as a trustee.

. On the face of this, I am satisfied that the reasoning set out by the trial Court in support of the order of acquittal does not warrant reconsideration at the hands of this Court. Hence, leave to appeal is refused and the application is rejected.

(B.H.MARL